

**GUIDANCE DOCUMENT:**  
**PROVISIONS FOR PRIVATE SCHOOL STUDENTS,**  
**TEACHERS, AND OTHER EDUCATION PERSONNEL**  
**IN**  
**NO CHILD LEFT BEHIND ACT OF 2001**

The Elementary and Secondary Education Act (ESEA), as reauthorized by the No Child Left Behind (NCLB) Act of 2001, provides educational services and programs to private school children, teachers, and other education personnel, including those in religiously affiliated schools. Benefits and “services funded under NCLB are designed to be of direct assistance to students and teachers and not to private schools” (U. S. Department of Education [USDE], NCLB Summary, p.1). The reauthorized ESEA provides for the equitable participation of private school students, teachers, and other educational personnel in some of its major programs.

This document presents information concerning some key NCLB provisions, questions and answers regarding the participation of private school students, teachers, and other educational personnel in the programs, and a brief summary of each program included under equitable participation guidelines (NCLB, Title IX, sections 9501-9504). Much of the information in this document has been drawn from federal guidance documents posted on the USDE Web site at <http://www.ed.gov>.

The following programs, which are administered by the California Department of Education (CDE), are addressed in this document:

*Title I Improving the Academic Achievement of the Disadvantaged*

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## **QUESTIONS AND ANSWERS**

The following are questions and answers to general and program specific private school participation requirements of NCLB.

### **GENERAL:**

**The following questions and answers apply to all of the programs listed on pages 1 and 2 unless otherwise noted.**

**1. *What does equitable participation by private school students, teachers, and other educational personnel mean?***

Title IX of NCLB sections 9501-9504 (Uniform Provisions) provide the framework for equitable participation of private school students, teachers, and other educational personnel in programs providing services governed by Uniform Provisions. Specific legislative language containing this information can be found at <http://www.ed.gov/policy/elsec/leg/esea02/pg111.html>

Under the Uniform Provisions, local educational agencies (LEAs), consortia, or entities receiving federal financial assistance are required to make educational services available to eligible private school students, teachers, and other educational personnel consistent with the number of eligible students enrolled in private elementary and secondary schools in the communities or geographic area served by the LEA, consortium, or entity. These educational services and other benefits must be comparable to the services and other benefits provided to public school students, teachers, and other educational personnel participating in the program and must meet the needs of private school students, teachers, and other educational personnel. The services are to be provided in a timely manner. Private schools are not required to accept the educational services.

To ensure equitable participation, the LEA, consortium, or entity receiving federal financial assistance must:

- Consult with private schools to assess, address, and evaluate the needs of private school students and educators
- Spend an equal amount of funds per student to provide services
- Provide private school students and educators with an opportunity to participate in educational services equivalent to the opportunity provided to public school students and educators
- Offer educational services that are secular, neutral, and nonideological

Three of the federal programs administered by the CDE contain their own federal provisions for the equitable participation of private school students, teachers, and other educational personnel that differ, in some respects, from the Uniform Provisions. These are Title I, Part A (Improving Basic Programs Operated by

Local Educational Agencies); Title V, Part A (Innovative Programs); and Title V, Part D, Subpart 6 (Gifted and Talented Students). Information on these provisions can be found in the program specific sections.

**2. *What are the requirements for timely and meaningful consultation?***

NCLB Section 9501(c)(1) states that *“to ensure timely and meaningful consultation, the LEA, consortium, or entity shall consult with appropriate private school officials during the design and development of the programs”* under NCLB. At a minimum the LEA, consortium, or entity must consult with private school representatives on:

- How the needs of private school students, teachers, and other educational personnel will be identified
- What services will be offered
- How, where, and by whom the services will be provided
- How the services will be assessed and how the results of the assessment will be used to improve those services
- The size and scope of the equitable services to be provided to the eligible private school students, teachers, and other educational personnel and the amount of funds available for those services
- How and when the LEA, consortium, or entity will make decisions about the delivery of services, including a thorough consideration and analysis of the views of the private school officials on the provision of contract services through potential third-party providers

The LEA, consortium, or entity is to consult with private school administrators prior to the submission of the funding application (i.e., formula or competitive grant) to the CDE. During the funding application process, the CDE will collect information on how the LEA, consortium, or entity has complied with this requirement.

**3. *What happens if there is a disagreement between the LEA, consortium, or entity and the private school on the provision of services through a contract?***

NCLB Section 9501 states that if the LEA, consortium, or entity disagrees with the views of the private school officials on the provision of services through a contract, the LEA, consortium, or entity shall provide to the private school officials a written explanation of the reasons why it has chosen to use or not use a contractor. The LEA, consortium, or entity should maintain copies of this written communication.

4. ***Must an LEA, consortium, or entity contact the officials of all private schools every year, even when there have been no recent indications of a desire to participate in the federal program(s)?***

Yes. The LEA, consortium, or entity is required to contact appropriate officials of all private schools within the boundaries of the school district annually to determine if they want their educators and/or students to participate in the program, regardless of whether or not those officials have indicated any interest in program participation in the past. In addition, for Title I, the LEA, consortium, or entity must contact the private schools in other communities that are serving eligible students who are residents of the school district.

LEAs, consortia, or entities can find a complete list of private schools with enrollment of six or more students at: <http://www.cde.ca.gov/ds/si/ps/>.

5. ***When must an LEA, consortium, or entity consult with appropriate private school officials?***

Title IX, Part E, Uniform Provisions, ensures timely and meaningful consultation, an LEA, consortium, or entity shall consult with appropriate private school officials during the design and development of the programs under NCLB and prior to the submission of a formula or competitive grant application to the CDE. The consultation shall occur before the agency, consortium, or entity makes any decision that affects the opportunities of eligible private school children, teachers, and other educational personnel to participate in programs under NCLB, and shall continue throughout the implementation and assessment of activities under this section.

6. ***May an LEA, consortium, or entity ask private school representatives to submit documentation?***

Yes. LEAs, consortia, or entities may request that reasonable documentation be submitted in a timely manner, as needed, from private school officials to help the LEA, consortium, or entity identify educational services that may be appropriate to the needs of private school students and educators. Such documentation should be limited to a description of the needs of the students and/or educators and a brief description of the services and programs desired to meet those needs. If specific documentation is not available, other equivalent documentation may be used.

7. ***What kinds of records should an LEA, consortium, or entity maintain in order to show that it has met its responsibilities for equitable participation of private school educators and/or students?***

To meet its general record-keeping responsibility, an LEA, consortium, or entity should document that:

- (a) Representatives of private schools were informed of the availability of services in a timely manner

- (b) The needs of private school educators and/or students were identified
- (c) Private school officials were consulted and provided an opportunity for input into the planning of the LEA's, consortium's, or entity's program activities on a regular basis
- (d) The amount of funds made available were equitable to those allocated for public school students and educators
- (e) The LEA, consortium, or entity-designed project met the needs of the private school educators and/or students

The LEA, consortium, or entity also should maintain records of its efforts to resolve any complaints made by private school representatives regarding any issues that are raised.

Note: For Title I, see Question A7 in the Program Specific section.

**8. *Does an offer of services from the LEA meet the requirement of consultation?***

An offer of services by an LEA, consortium, or entity without opportunity for timely and meaningful consultation with private school officials does not meet the requirement of the law. Only after discussing key issues relating to the provision of services and identifying the needs of the students and/or teachers to be served should the LEA make its final decisions with respect to the services and benefits it will provide to eligible private school students and teachers. However, a documented offer of timely and meaningful consultation, to which a private school either fails to respond or declines, fulfills the requirement for private school participation for that private school.

**9. *Who has control of the funds?***

NCLB Section 9501 states that the LEA, consortium, or entity maintains control of the federal funds used to provide services under the grant programs funded through the NCLB. It also maintains title to materials, equipment, and property purchased with those funds. The LEA, consortium, or entity may allow the private schools to keep the items from year to year, in accordance with approved ongoing activities, so long as appropriate records are maintained. Thus, private schools receive **no** direct federal funding under NCLB.

Funds used to provide services under this section shall not be commingled with non-federal funds.

**10. *How is the carryover of funds handled in regard to the equitable participation of private school students?***

In general, if an LEA provided equitable services for private school students in the first year, any carryover funds would be considered additional funds for that program in the subsequent year. Those funds then would be used, along with

any other carryover funds, for both public and private school students on an equitable basis.

**11. *How does the CDE receive and use information on private school student enrollment?***

California *Education Code* Section 33190 states that private schools are required to complete and submit a Private School Affidavit containing enrollment figures and other information between October 1 and October 15 to the State Superintendent of Public Instruction. Affidavits and statistical information generated from compliance with this regulation can be found at <http://www.cde.ca.gov/sp/ps/rq/>.

The CDE uses private and public school enrollment information to calculate grant entitlement allotments. NCLB Section 1120 specifies that the formula for determining Title I funds to private schools be determined by student residency. Conversely, grant formulas for Titles II, III, IV, and V are based on total enrollment figures rather than residency. This means that all students in the private school, including those who are not residents of the district, are counted for allocation purposes for Titles II, III, IV, and V.

In addition, for Title III purposes, all private schools are asked to submit data on the annual enrollment of eligible immigrant students via the Student National Origin Report (SNOR). For details please go to <http://www.cde.ca.gov/sp/el/t3/snor.asp>.

Identification of Limited English Proficient (LEP) students should be conducted according to instructions from the local public school district. Additional details are available at <http://www.cde.ca.gov/sp/el/t3/>.

**12. *Are private school students and educators entitled to equitable participation in competitive grants as well as in formula grants?***

Yes. In some cases, private school students, teachers, and other educational personnel are entitled to equitable participation in programs funded through competitive grants. These competitive grant programs include:

- Title I, Part A, Subpart 1 (Reading First)
- Title I, Part A, Subpart 3 (Even Start)
- Title II, Part D (Enhancing Education Through Technology)
- Title IV, Part A, Discretionary Grant Programs (Including: Safe Schools/Healthy Students initiative, National Coordinator Program, Community Service Grant Program, Grants to Reduce Alcohol Abuse, Emergency Response and Crisis Management Plans, Mentoring Programs, Demonstration Grants for Student Drug Testing, and Programs for Native Hawaiians (*Discretionary grant programs are not necessarily funded each year. Although the Community Service Program is contained*

*in the National Programs section, it is a formula rather than a discretionary program)*

- Title IV, Part B, (21st Century Community Learning Centers)

Under Uniform Provisions, LEAs, consortia, and entities seeking these competitive grant funds must consult with appropriate private school officials during the design and development of the proposal prior to grant submission. Consultation continues throughout the implementation and assessment of grant activities. Consultation is dynamic and requires the active participation of both parties, the LEA, consortium, or entity and the private school. Thus, types or methods of consultation may include face-to-face meetings, electronic interaction, and/or telephone conversations.

**13. *How can private schools assist the LEA, consortium, or entity in meeting the obligation for equitable participation and consultation?***

Private schools can facilitate the process by:

- Completing and submitting the Private School Affidavit to the California State Superintendent of Public Instruction, Elementary Education Office, between October 1 and October 15 each year
- Responding to the LEA's, consortium's, or entity's request for information in a timely manner
- Providing documentation on the needs of students, teachers, and other educational personnel in accordance with each grant program's requirements
- Assessing student achievement in accordance with grant program requirements
- Forming private school work groups within districts to facilitate the consultation process

**14. *What recourse is available if an LEA, consortium, or entity will not use its federal funds to provide equitable services to private school students, teachers, and other educational personnel?***

The private school should first work to resolve the concerns at the local level. If a reasonable solution cannot be reached, the individual(s) or organization(s) alleging a violation of NCLB sections 9501-9504 by a state education agency (SEA), LEA, educational service agency, consortium of those agencies, or entity must submit the complaint to the CDE for a written resolution within a reasonable amount of time. The state appeals process and subsequent policies are currently being defined. An advisory will be disseminated once these are finalized. If this resolution is not acceptable, the interested party may appeal the decision to the Secretary of Education, USDE, within 30 days. The Secretary shall investigate and resolve the appeal not later than 120 days after receipt of the appeal.

**15. *Do charter schools need to provide equitable services to private schools?***

No. Charter schools do not have geographic boundaries in the same manner as traditional school districts, nor are they funded in the same manner. Charter schools must accept any student who wishes to attend the school (subject to capacity constraints), and are funded based on actual enrollment, rather than on population (census) within a defined geographic boundary.

**16. *Do all charter school districts need to provide equitable programs and services to private schools?***

Yes. Charter school districts have defined geographic boundaries and private schools are located within these boundaries, and they are subject to the provisions regarding equitable participation of private schools.

**17. *Does the law require that an LEA, consortium, or entity provide equitable services with NCLB funding only to private “nonprofit” schools?***

Yes. NCLB Section 9501 requires LEAs, consortia, or entities to provide equitable services to students, teachers, and other educational personnel in “private elementary and secondary schools.” NCLB defines “elementary” and “secondary” schools to mean only “nonprofit institutional day or residential school(s)” (NCLB Section 9101).

**18. *What best practice might assist LEAs in working effectively with private school officials regarding the implementation of federal education programs for private school students and teachers?***

In order to facilitate consultation between public and private school officials and the effective implementation of programs and services for private school students and teachers, LEAs are encouraged to create *Private School Working Groups* made up of representatives from the full spectrum of private schools. Through regular meetings, such groups can smooth the progress of federal education program implementation for private school students and teachers.



## **PROGRAM SPECIFIC INFORMATION**

The following questions and answers pertain to specific programs.

<p style="text-align: center;"><b>Segment A</b> <b>Title I, Part A – Improving Basic Programs Operated by Local Educational Agencies</b></p>
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Title I, Part A, provides supplementary instruction by public school teachers or through a third-party contractor to students who are educationally disadvantaged and failing or are most at risk of failing to meet high academic standards, and who live in areas of high poverty. Instruction may take place during the school day, before or after school, or in the summer.

**A1. *What is the applicability of state academic assessment to private schools?***

Private schools, including private schools with Title I students, are not required to participate in a state's academic assessments. If a private school has students who receive Title I services, the LEA, consortium, or entity must consult with private school officials about how those students will be assessed.

NCLB Section 200.10 addresses this issue. Specifically, it states:

Nothing in Section 200.1 or Section 200.2 requires a private school whose students receive Title I services to participate in a state's academic assessment system.

- (a) If an LEA, consortium, or entity provides services to eligible private school students, the LEA, consortium, or entity must, through timely consultation with appropriate private school officials, determine how services will be academically assessed and how the results of that assessment will be used to improve those services
- (b) The assessments may be the state's academic assessments or other appropriate academic assessments. These Title I regulations for standards and assessment requirements went into effect on August 5, 2002, and are available at <http://www.ed.gov/legislation/FedRegister/finrule/2002-3/070502a.html>.

**A2. *How are Title I funds for private school students determined?***

NCLB Section 1120 specifies that funds are generated on the basis of the number of students from low-income families who reside in participating public school attendance areas and attend private schools whether the private schools are located within or outside district boundaries. Private school students, who reside within a Title I attendance area, and who are failing or most at risk of failing to meet high academic standards, are eligible for services.

After timely and meaningful consultation the LEA, consortium, or entity shall “have the final authority to calculate the number of children, ages 5 through 17, who are from low-income families and attend private schools.” NCLB Section 1120 states that the following processes may be employed:

- Use the same measure of low income used to count public school children (i.e., eligibility for participation in the National School Lunch Program)
- Use the results of a survey that, to the extent possible, protects the identity of families of private school students, and allowing such survey results to be extrapolated if complete actual data are unavailable
- Apply the low-income percentage of each participating public school attendance area to the number of private school children who reside in that school attendance area
- Use an equated measure of low income correlated with the measure of low income used to count public school children

Expenditures for educational services and other benefits to eligible private school children shall be equal to the proportion of funds allocated to participating school attendance areas based on the number of children from low-income families who attend private schools, which the LEA, consortium, or entity may determine each year or every two years (NCLB Section 1120).

Also, see Title I, Appendix D: Generating Funds for Services to Eligible Private School Students at [http://finance1.doe.mass.edu/Grants/grants03/rfp/305\\_appn\\_d.html](http://finance1.doe.mass.edu/Grants/grants03/rfp/305_appn_d.html).

**A3. *Where may Title I services be provided to private school students?***

Under Title I Section 1120, services may be provided at the private school, including religiously affiliated schools, or at other locations.

However, such educational services or other benefits, including materials and equipment, shall be secular, neutral, and nonideological. See Guidance on the Supreme Court's Decision in *Agostini v. Felton* and Title I, Part A, of NCLB at <http://www.ed.gov/legislation/ESEA/feltguid.html>.

**A4. *What services may be provided to private school students, parents, and educators?***

NCLB Section 1111 states that services may include assistance through a pull-out model, supplementary instruction, direct instruction, computer-assisted instruction, tutoring, counseling, family literacy, and early childhood programs. In addition, the law requires equitable participation of private school teachers and other educational personnel of Title I students in professional development activities and of parents of Title I students in parent involvement activities.

**A5. *Who may be contracted to provide services in private schools?***

Services identified in NCLB Section 1120 may be provided:

- By employees of the LEA, consortium, or entity or another public agency
- Through contracts with third-party providers such as public and private agencies, organizations, and institutions

Uniform Provisions states that in the provision of those services, the employee, person, association, agency, organization, or entity shall be independent of the private school and of any religious organization. The employment or contract shall be under the control and supervision of the LEA, consortium, or entity.

**A6. *If an LEA contracts with a third-party provider, must the third-party provider employ Title I teachers and paraprofessionals that meet the qualification requirements in NCLB Section 1119 of Title I?***

No. The highly qualified personnel requirements only apply to those teachers and paraprofessionals who are directly employed by the LEA.

**A7. *What records does the LEA, consortium, or entity need to maintain regarding private school participation in Title I services?***

An LEA, consortium, or entity is required to maintain records of an offer of consultation to officials at private schools where eligible students attend. Each LEA, consortium, or entity shall maintain in the agency's records and provide to the SEA a written affirmation signed by appropriate officials of each participating private school that the consultation required by this section has occurred. If appropriate private school officials do not provide such affirmation within a reasonable period of time, the LEA, consortium, or entity shall be considered to have fulfilled its consultation requirement relative to the non-responding private schools.

Additional information regarding Title I guidance in California can be accessed at <http://www.ed.gov/programs/titleiparta/psguidance.doc>.

<p style="text-align: center;"><b>Segment B</b> <b>Title I, Part B – Student Reading Skills Improvement Grants</b></p>
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NCLB Section 1201, Reading First, provides funding to implement comprehensive reading instruction for students in kindergarten through third grade. Funds must be used for reading programs; instructional materials; professional development; administering screening, diagnostic, and classroom-based reading assessments; collecting and reporting data; and promoting reading and library programs. Private school students in the areas served by public schools receiving Reading First funds are eligible for services.

**B1. *Are private school students eligible to participate in the Reading First program?***

Yes. Funds awarded to LEAs, consortia, or entities under Reading First are subject to the requirements of Uniform Provisions. The statute requires LEAs, consortia, or entities to provide private school students, teachers, and other educational personnel with educational services that address their needs related to Reading First on an equitable basis with public school students, teachers, and other educational personnel. LEAs, consortia, or entities must provide these services in a timely manner.

Funds going toward educational services (and other benefits) for private school students and their educators must be equitable on a per-pupil basis to the funds provided for participating public school students and educators, taking into account the number and educational needs of the students to be served.

All services and benefits provided to private school students and their educators under Reading First must be secular, neutral, and nonideological.

LEAs, consortia, or entities seeking Reading First grants must consult with appropriate private school officials during the design and development of their Reading First plans on such issues as determining eligibility of private school students; identifying the students' needs; what services will be offered; how, where, and by whom services will be provided; and how the services will be assessed.

**B2. *How is the eligibility of private school students determined?***

In general, under Uniform Provisions private school students in the areas served by public schools receiving Reading First funds would be eligible. This determination can be made either through private school students residing in the attendance area of a public school receiving Reading First funds, or by the location of a private school in the attendance area of a public school receiving Reading First funds. The CDE will provide further guidance on this area through its competitive Reading First Request for Proposals process and associated correspondence.

**B3. *May Reading First program funds be used to fund "reading coaches"?***

It is permissible to use program funds to provide the services of reading coaches to private school students as long as the coach is a public employee, is not the primary teacher, and is under public supervision and control.

<p style="text-align: center;"><b>Segment C</b> <b>Title I, Part C – Education of Migratory Children</b></p>
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The Migrant Education Program (MEP) is governed by the Uniform Provisions and requires the equitable participation of private school migrant students, their teachers, and other education personnel in schools located in targeted areas.

**C1. *Must an SEA and LEA serve eligible migrant children who attend private schools?***

Yes. NCLB Section 9501 and Section 299.6 of the implementing regulations require SEAs that receive MEP funds to provide special educational services or other benefits on an equitable basis to eligible children who are enrolled in private schools, and to their teachers and other educational personnel. This must be done after timely and meaningful consultation with appropriate private school officials.

**C2. *Who must comply with the consultation requirement – the SEA or the LEA?***

The agency that operates the local MEP project must comply with this requirement.

**C3. *How does an agency meet the consultation requirement with private school officials?***

To meet this requirement, the agency must consult with private school officials before making any decision that affects the opportunities of eligible private school children to participate in a MEP project. Consultation must cover all phases of the design and development of the MEP project, including:

- How the agency will identify the children's needs
- What services the agency will offer
- How and where the agency will provide those services
- Who will provide the services
- How the agency will assess the services and how it will use results of the assessment to improve those services
- Amount of funds available for services
- Size and scope of the services to be provided
- How and when the agency will make decisions about the delivery of services

**C4. *Which children who attend private schools are eligible to receive MEP services?***

Children who attend private school are eligible to receive MEP services if they: 1) meet the statutory and regulatory definition of a migrant child; 2) meet the priority for services criteria in NCLB Section 1304(d); and 3) have special educational

needs identified through the state's comprehensive needs assessment and service delivery plan.

**C5. *May an LEA decide not to serve eligible migrant private school children because there are too few of them to serve?***

Yes. The SEA and LEA have the discretion to determine what number of eligible students is too few to serve, so long as this determination is made on an equitable basis (i.e., on the same basis as public schools). If it is feasible and equitable, agencies may adopt alternative methods that are cost-effective to serve small numbers, such as individual tutoring programs, professional development activities with the classroom teachers of eligible migrant students, or other similar strategies.

**C6. *If private school officials do not wish to have their children participate in the MEP, is the SEA or LEA still required to serve these children?***

No. If, after consultation with private school officials, the officials do not wish to have their students participate in the MEP, neither the SEA nor the LEA is required to serve these children. However, in its consultation, the local operating agency should explain the various ways in which the agency can help provide services to children attending private schools.

**C7. *Should the SEA assess the needs of private school children residing in the state?***

Yes. Through the consultation process with private school officials, the LEA may assess the needs of eligible migrant children enrolled in private schools in its service area. These children would then be included in the statewide needs assessment.

**C8. *Must the services the SEA provides private school children be the same as those it provides public school children?***

No. Although the statute and regulations require SEAs to provide services on an equitable basis, the services do not have to be the same in order to be equitable. If the needs assessment reveals that private school children have different special educational needs than public school migrant children, the services offered should address those needs. (See 34 CFR 299.7(c)).

**C9. *How does an agency determine whether services are equitable?***

Section 299.7(b)(2) of the regulations provides that services are equitable if the agency:

1. Addresses and assesses the specific needs and educational progress of private school children on a comparable basis as public school children
2. Determines the number of students to be served on an equitable basis
3. Meets the equal expenditure requirements
4. Provides private school children with an opportunity to participate that –

- Is equitable to the opportunity and benefits provided to public school children
- Provides reasonable promise that participating private school children will meet the challenging academic standards called for by the state's student performance standards (or equivalent standards applicable to private school children and agreed upon during consultation between public and private school officials)

**C10. *What happens if, after offering to provide equitable services to private school children, participation is low or the children participate only in some of the services?***

If the private school children's participation is low or they choose to participate only in some of the services the agency offers, the agency should examine why this is so and, if appropriate, modify the project in a manner that increases participation. If modification of the project does not increase participation and the agency determines that it is not cost-effective to provide services, the agency may terminate the services, so long as this decision is made on an equitable basis.

**C11. *If children reside in a geographical area served by one LEA but their school is located in a geographical area served by another agency, which agency is responsible for serving them?***

The LEA that serves the geographical area where the school is located is responsible for serving the children. (See NCLB Section 9501(a)(1)).

**C12. *How might an SEA ensure that local operating agencies collaborate with private school officials to provide appropriate services to migrant children enrolled in private schools?***

An SEA might use its subgrant application process as one way to ensure that LEAs consult with private school officials in providing services to eligible migrant children. For example, the SEA could establish procedures for refusing to award a subgrant unless the application addresses whether and how the local operating agency consulted with private school officials in designing and developing its migrant education project. Alternatively, the SEA might use its monitoring process to ensure that local operating agencies meet this requirement.

**C13. *May MEP personnel go on the premises of religiously affiliated private schools to provide MEP instructional services?***

Yes. MEP personnel may provide direct services to eligible private school migrant students on site at private schools, including religiously affiliated schools.

**C14. *What can a small rural LEA with a small MEP allocation do to provide equitable services to private school children?***

Rural LEAs may have special problems because of small allocations, large distances between private schools, and few locations to provide services. These

agencies may consider leasing rather than purchasing equipment, renting a neutral site, or using home tutoring to provide equitable services. They may also consider setting up a joint project with neighboring operating agencies and submitting a combined application.

Additional information on MEPs can be accessed at  
<http://www.ed.gov/programs/mep/mepguidance2003.doc>.

<p style="text-align: center;"><b>Segment D</b> <b>Title II, Part A – Teacher and Principal Training and Recruiting Fund</b></p>
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Title II, Part A, provides assistance for preparing, training, recruiting, and retaining high-quality teachers. The amount of funding available for services to private school personnel is governed by NCLB Section 9501, which requires equitable participation of private school teachers and other educational personnel to the extent that the LEA, consortium, or entity uses its funds for professional development.

In accordance with NCLB Section 1114, professional development activities may include:

- Improving the knowledge of teachers, principals, and other educational personnel in one or more of the core academic subjects and in effective instructional teaching strategies, methods, and skills
- Training in effectively integrating technology into curricula and instruction.
- Training in how to teach students with different needs, including students with disabilities or LEP and gifted and talented students
- Training in methods of improving student behavior, identifying early and appropriate interventions, and involving parents more effectively in their children's education
- Leadership development and management training to improve the quality of principals and superintendents
- Training in the use of data and assessments to improve instruction and student outcomes (USDE [12/19/02]. *Non-Regulatory Draft Guidance*, p. 3)

**D1. How does an LEA, consortium, or entity determine the amount of funds required for equitable services to private school educational personnel?**  
Funds provided for professional development for private school teachers must be equal to the amount spent for public school teachers, on a per-pupil basis. Hence, on a per-pupil basis, expenditures for professional development for public and private school teachers must be equal. The statute expects that the LEA, consortium, or entity spends, at a minimum, the amount expended by the LEA, consortium, or entity for professional development in 2001-2002 under the



Eisenhower Professional Development and federal Class-Size Reduction programs.

To determine the per-pupil allocation under NCLB Section 1113, LEAs, consortia or entities should take the total amount allocated for professional development in the district and divide this amount by the total number of public school students and private school students (enrolled in private elementary and secondary schools in the area served by the LEA, consortium, or entity) to arrive at a per-pupil amount. This per-pupil amount should then be multiplied by the total number of students enrolled in private schools to arrive at a total amount of funds to be designated for professional development for private school educators participating in the program.

When calculating the total amount of funds to be used for professional development, an LEA, consortium, or entity may first deduct the cost of administering the professional development program under Title II, Part A, including activities for private school educators (NCLB Section 1120). See question D11.

**D2. *What happens if an LEA, consortium, or entity decides not to use any of its Title II, Part A, funds for professional development? How does the LEA, consortium, or entity meet its obligation to provide for the equitable participation of private school educators?***

Under Uniform Provisions the LEA, consortium, or entity must set aside Title II, Part A, funds for professional development for private school educators, even if the district decides not to use any of these funds for professional development activities. For purposes of determining the amount of Title II, Part A, funds that an LEA, consortium, or entity must make available for services to private school educational personnel, the statute creates a presumption that the LEA, consortium, or entity is spending at least as much for professional development under Title II, Part A, as it did in 2001-2002 under the Eisenhower Professional Development and federal Class-Size Reduction programs. The total amount of funds expended by the district for professional development under these prior grant programs would be the basis for determining the per-pupil amount and total allocation for private school educators.

This is an ongoing requirement. That is, as long as the LEA, consortium, or entity receives Title II, Part A, funds, it must assume that it is spending at least as much for professional development under Title II, Part A, as it did in 2001-2002 under the Eisenhower Professional Development and federal Class-Size Reduction programs for purposes of calculating the equitable amount of funds to be spent on professional development for private school educators.

**D3. *How does the LEA, consortium, or entity ensure that it is providing equitable services?***

In order to ensure that it is providing equitable professional development services to private school educational personnel, the LEA, consortium, or entity should consider ways to:

- Assess, address, and evaluate the needs and progress of both public and private school educators
- Spend an equal amount of funds per student to serve the needs of public and private school educators and their students
- Provide private school educators with an opportunity to participate in Title II activities equivalent to the opportunity provided public school educators
- Offer educational services to private school educators that are secular, neutral, and nonideological

**D4. *What are some of the eligible activities under this program in which private school teachers and other educational personnel may participate?***

As with any activity sponsored by the LEA, consortium, or entity for public school educators, activities supported with Title II, Part A, funds benefiting private school educators must meet the requirements of Title II. NCLB Section 2101 states that activities carried out for private school personnel must be based on a review of scientifically based research and must be expected to improve student academic achievement. Thus, only activities meeting these standards are eligible for funding.

Professional development activities may include:

- Improving the knowledge of teachers, principals, and other educational personnel in one or more of the core academic subjects
- Improving the knowledge of teachers, principals, and other educational personnel in effective instructional teaching strategies, methods, and skills
- Training in effectively integrating technology into curricula and instruction.
- Training in how to teach students with different needs, including students with disabilities or LEP, and gifted and talented students
- Training in methods of improving student behavior, identifying early and appropriate interventions, and involving parents more effectively in their children's education
- Leadership development and management training to improve the quality of principals and superintendents
- Training in the use of data and assessments to improve instruction and student outcomes

**D5. *Does the professional development program for private school teachers have to be the same as the professional development program for public school teachers?***

No. According to Uniform Provisions, consultation and coordination are essential to ensuring high quality, sustained, intensive, and classroom-focused professional development activities for private school teachers. LEAs, consortia, or entities must assess the needs of private school educators in designing the professional development program for private school teachers. If the professional development needs of the private school educators are different from those of public school educators, the LEA, consortium, or entity, in consultation with private school representatives, should develop a separate program with the private schools' equitable share. In designing the program to meet the needs of private schools, an LEA, consortium, or entity may "pool" the funds for the schools and allow the private schools to do joint planning.

**D6. *What happens if an LEA's, consortium's, or entity's professional development offerings address some, but not all, of a private school's needs? How are costs calculated for private school participation in these activities and how does this affect the total private school allocation?***

After consultation, a district and private school may decide that the district's professional development activities address some of the private school's needs, but not all. Therefore, they may determine that the private school should participate in those activities and receive a reduced allocation to address its other needs. This reduction in allocation would reflect the cost of a private school's participation in a district's activity.

To arrive at the reduced allocation the district would determine the cost of the professional development activity that the private school wants to attend, then divide the total cost by the number of total participants in order to arrive at a per participant figure for that particular district offering. The district would then multiply the number of private school attendees by the per-participant cost. This would provide the private schools with the cost for participating in the activity. The district would then deduct this amount from the total private school allocation. The LEA would be able to use the remainder of the private school's "allocation" for other activities that address the private school teachers' needs.

**D7. *May funds be used to support the acquisition of advanced degrees by private school teachers?***

Yes. NCLB Section 2113 states that an LEA, consortium, or entity may use Title II, Part A, funds to support a teacher's acquisition of an advanced degree, including the acquisition of a California State Teaching Credential, if the degree program is consistent with the results of the needs assessment conducted for private school teachers. The financial support must be for graduate courses that would enable the teacher to provide more effective instruction.

**D8. *May funds be used to pay stipends to private school educators participating in a Title II, Part A, Improving Educator Quality Grants professional development program?***

Yes. Title II, Part A, funds may be used to pay for stipends for private school educators. The use of funds for stipends must be reasonable and necessary. For example, if the professional development activity is conducted during after-school hours or in the summer, stipends may be needed to compensate educators for their participation outside their regular employment hours. The stipends must be paid directly to the private school educators for their own use and not to the private school.

**D9. *May Title II, Part A, Improving Educator Quality Grants funds be used to pay for substitute teachers who replace teachers from private schools while they attend professional development activities?***

No. The Title II, Part A, program does not authorize payments to private schools to be used for hiring substitute teachers.

**D10. *May Improving Teacher Quality State Grant funds be used to pay any portion of a private school teacher's salary or benefits?***

No. While LEAs, consortia, or entities must set aside an amount of Title II, Part A, funds for the equitable participation of private school teachers in professional development activities, funds may not be used to pay or subsidize any portion of a private school teacher's salary or benefits.

**D11. *May administrative costs be considered in determining the per-teacher expenditures for private school teachers?***

Yes. LEAs, consortia, or entities pay the costs of administering professional development programs for public and private school educational personnel "off the top" of their total allocation. This is calculated before determining how much of the Title II, Part A, funds are to be made available for professional development of public and private school educators. Federal funds received are to be used to supplement, not supplant, non-federal funds (NCLB Section 2123).

To determine the amount of Title II, Part A, funds that an LEA, consortium, or entity must make available for equitable services to private school educational personnel, the LEA, consortium, or entity must assume that it is spending at least as much for professional development under Title II, Part A, as it did in 2001-2002 under the Eisenhower Professional Development and federal Class-Size Reduction programs. This amount cannot be reduced by charging administrative costs to this portion.

**D12. *Must the LEAs, consortia, or entities administer and retain control over the Title II, Part A, Improving Educator Quality Grants funds used to serve private school educators?***

Yes. The LEA, consortium, or entity must administer and retain control over the funds and, therefore, may not provide program funds directly to private schools.

**D13. *May professional development be conducted within private schools?***

Yes. Professional development activities may be conducted on private school premises.

**Segment E**  
**Title II, Part B – Math and Science Partnerships**

Title II, Part B, the Mathematics and Science Partnerships program, provides funds to improve mathematics and science teaching through a variety of activities. At the current appropriations level, partnerships must include an SEA; an engineering, math, or science department of an institution of higher education (IHE); and a high-need LEA, consortium, or entity. In accordance with NCLB Section 2201, nonprofit private schools may be members of these partnerships. The Mathematics and Science Partnerships program is governed by the Uniform Provisions and requires the equitable participation of teachers who teach in nonprofit private schools located in school districts where grants are awarded. Prior to submitting its grant request, the LEA needs to engage in timely and meaningful consultation with representatives of private schools regarding the needs of their teachers as related to improving mathematics and science teaching.

**Segment F**  
**Title II, Part D – Enhancing Education through Technology**

The Enhancing Education Through Technology (EETT) program provides funds for innovative initiatives to support the integration of educational technology into classrooms to improve teaching and learning. Activities may include professional development in technology integration and the use of the Internet, distance-learning initiatives, acquiring educational technology, and using technology to enhance parental involvement. This program is governed by the Uniform Provisions and requires the equitable participation of students and educators in private schools located in school districts that receive a Title II, Part D, grant.

**F1. *What do the equitable participation provisions in Title II, Part D, require LEAs, consortia, or entities to do?***

LEAs, consortia, or entities must engage in timely and meaningful consultation with appropriate private school officials during the design and development of programs and continue the consultation throughout the implementation of these

programs. Therefore, for both EETT formula and competitive awards, the consultation should begin during the development of the local grant proposals. Eligible LEAs, consortia, or entities that seek both competitive and formula funding under EETT may engage in consultations that simultaneously involve the Education Technology competitive and formula grants.

LEAs, consortia, or entities must provide, on an equitable basis, educational services or other benefits that address the educational technology needs of students, teachers, and other educational personnel in private schools in areas served by the LEAs, consortia, or entities.

Activities delineated in NCLB Section 2402 include professional development in technology integration and the use of the Internet; distance learning initiatives; acquiring educational technology; and using technology to enhance parental involvement.

**F2. *Must the expenditures that the LEA, consortium, or entity provides for private school educators be equal on a per-pupil basis?***

Title II, Part D, services for private school students, teachers, and other educational personnel must be equitable in relation to services to public school students, teachers, and other educational personnel under Uniform Provisions. The law also requires that funds for private schools be equal on a per-pupil basis. Hence, on a per-pupil basis, expenditures for public and private school students and educators must be equal.

The per-pupil allocation is based on the number of eligible students “enrolled in private elementary schools and secondary schools in areas served” by the school district. Residence is not a factor.

**F3. *Who has control of the funds?***

NCLB Section 2414 states that the LEA, consortium, or entity maintains control of funds used to provide services under Title II, Part D. It also maintains title to materials, equipment, and property purchased with those funds.

Additional information can be found at <http://www.cde.ca.gov/ls/et/ft/eett.asp>.

<p style="text-align: center;"><b>Segment G</b> <b>Title III, Part A – English Language Acquisition, Language Enhancement, and Academic Achievement: Overview</b></p>
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NCLB Section 3102 describes the goals of the English Language Acquisition, Language Enhancement, and Academic Achievement program. It provides funds for helping LEP and eligible immigrant students attain English proficiency and meet the same challenging state academic content and student achievement standards as all students

are expected to meet. Private school students, teachers, and other educational personnel whose schools are located within an LEA, consortium, or entity that receives a grant from the state are eligible to participate in this program, as specified in the Uniform Provisions.

**G1. *What is meant by “equitable” participation by public and private school students and educational personnel in a Title III program?***

Participation is considered to be equitable if the LEA, consortium, or entity:

- Assesses, addresses, and evaluates the needs and progress of public and private school students and educational personnel on a comparable basis
- Provides, in the aggregate, approximately the same amount of services to students, teachers, and other educational personnel with similar needs
- Spends an equal amount of funds to serve similar public and private school students and educational personnel
- Provides both groups of students, teachers, and other educational personnel equal opportunities to participate in program activities

**G2. *Must an LEA’s, consortium’s, or entity’s Title III program design be the same for both public and private school students and educational personnel?***

No. Consultation and coordination between LEA, consortium, or entity and private school officials are essential to ensure a high-quality program that meets the needs of the students being served and assists those students in attaining English proficiency and meeting the same challenging standards as all students are expected to meet. The LEA, consortium, or entity must assess the needs of private school students, teachers, and other educational personnel in designing a program that meets their needs. If their needs are different from those of public school students, teachers, and other educational personnel, the LEA, consortium, or entity, in consultation with private school officials, must develop a separate program design that is appropriate for their needs.

**G3. *What topics need to be addressed by the LEA in order to conduct a meaningful consultation with the private school in the design and development of Title III programs, services, or products to be provided?***

To ensure timely and meaningful consultation, the LEA must consult with appropriate private school officials during the design and development of the Title III program on issues such as:

- How the LEP children’s needs will be identified
- What services will be offered
- How, where, and by whom the services will be provided
- How the services will be assessed and how the results of the assessment will be used to improve those services

- The size and scope of the services to be provided to the private school children and educational personnel
- The amount of funds available for those services
- How and when the LEA will make decisions about the delivery of services, including a thorough consideration of the views of the private school officials on the provision of contract services through potential third-party providers

**G4. *Must an LEA's, consortium's, or entity's Title III program design be the same for both public and private school students and educational personnel?***

No. Consultation and coordination between LEA, consortium, or entity and private school officials are essential to ensure a high-quality program that meets the needs of the students being served and assists those students in attaining English proficiency and meeting the same challenging standards as all students are expected to meet. The LEA, consortium, or entity must assess the needs of private school students, teachers, and other educational personnel in designing a program that meets their needs. If their needs are different from those of public school students, teachers, and other educational personnel, the LEA, consortium, or entity, in consultation with private school officials, must develop a separate program design that is appropriate for their needs.

**G5. *Does the Title III requirement on language qualifications for teachers providing Title III services to public school students apply to teachers providing these services to private school students?***

Yes. Like teachers serving public school, LEP students, and teachers providing Title III, services to private school students must be fluent in English and any other language used for instruction.

**G6. *What process should be used to identify LEP students in private schools?***

The CDE recommends that private schools make an agreement with the LEA to use procedures similar to those used by public schools to identify private schools students eligible for Title III services (*Education Code* sections 52164 and 62002). The LEA is responsible for the oversight and costs of initial identification. The process is as follows:

1. The private school should identify those pupils being considered for participation in the Title III program and administer a Home Language Survey that is to be completed by the parent or guardian of selected private school students. Private schools should use the same version of the Home Language Survey used by the LEA.
2. If a language other than English is indicated on the Home Language Survey, an English-language assessment should be administered to



determine whether the student is limited-or fluent-English proficient. Since access to the *California English Language Development Test (CELDT)* is restricted, another assessment must be used with private school students. These assessments must have technical data demonstrating their validity and reliability to measure listening, speaking, reading, and writing skills in English for non-native speakers. A list of some tests that meet these criteria and were previously approved for use in California's public schools is available at <http://www.cde.ca.gov/sp/el/t3/title3faq.asp#PrivateSchools>.

3. Private schools may wish to further assess identified LEP students in their primary language to diagnose needs and determine the best strategies to assist the student in furthering English language proficiency.

**G7. How are eligible immigrant students identified?**

Private schools are required to submit annually the Student National Origin Report (SNOR) on an annual basis. The SNOR consists of a count of all foreign-born students who have been enrolled in any U.S. school within the kindergarten to grade 12 span for a period of three full academic years or less. Specific instructions are contained in the SNOR form and the Directory of National Origin Names and Country Codes located at <http://www.cde.ca.gov/sp/el/t3/snor.asp>.

Additional information about Title III can be found at <http://www.cde.ca.gov/sp/el/t3/title3faq.asp#PrivateSchools>.

**Segment H**

**Title IV, Part A—Safe and Drug-Free Schools and Communities: Overview**

The *Safe and Drug-Free Schools and Communities Act* supports programs that foster a safe and drug-free learning environment.

Although NCLB sections 4114 and 4115 specify a variety of activities that may be supported with Safe and Drug Free Schools and Communities funds, NCLB Section 4115(a)(1)(A) and (C) require that choice of activities be based on analysis of objective data and scientifically based research that provides evidence that the program to be used will reduce violence and illegal drug use. The CDE has compiled lists of science-based programs, consistent with the definition in NCLB Section 9101(37). This list may be accessed via the CDE Web site at

<http://www.cde.ca.gov/re/lr/wr/documents/sciencebased.doc>. LEAs and private schools should refer to this list of science-based programs during their timely and meaningful consultation, as LEAs are restricted to purchasing programs from this list. Private schools must choose from this list; they are not restricted to only those programs that have been chosen by the LEA for its public school students.

Participation in the California Healthy Kids Survey (CHKS) is also within the range of services available to private schools. Although private schools should base their choice of program on objective data, they are not required to participate. Participation in the CHKS is also dependent on maintaining the anonymity of the students responding to the survey. If the number of students in the private school is not sufficient to maintain anonymity, the survey should not be administered.

In addition, equitable participation of private school students and teachers is also required in the Title IV, Part A, Discretionary Grant Programs, including: Safe Schools/Healthy Students initiative, National Coordinator Program, Community Service Grant Program, Grants to Reduce Alcohol Abuse, Emergency Response and Crisis Management Plans, Mentoring Programs, Demonstration Grants for Student Drug Testing, and Programs for Native Hawaiians. Discretionary grant programs are not necessarily funded each year. Although the Community Service Program is contained in the national programs section, it is a formula rather than a discretionary program.

**H1. *What private school students can receive Title IV, Part A, services?***

Under Uniform Provisions any student attending a private school within the boundaries of the LEA, consortium, or entity and whose school chooses to participate in the program may receive services.

**H2. *Must an LEA's, consortium's, or entity's Title IV, Part A, program design be the same for both public and private school students and educational personnel?***

No. To the extent consistent with the number of students who are enrolled in private elementary and secondary schools in areas served by the LEA, consortium, or entity, the LEA, consortium, or entity shall, after timely and meaningful consultation with appropriate private school officials, provide to those students and their educators educational services or other benefits that address their needs under the program.

The required consultation shall occur before the LEA, consortium, or entity makes any decision that affects the opportunities of eligible private school students, teachers, and other educational personnel to participate in programs, and should continue throughout the implementation and assessment of activities.

Educational services and other benefits provided for private school students, teachers, and other educational personnel shall be equitable in comparison to services and other benefits for public school students, teachers, and other educational personnel participating in the program and shall be provided in a timely manner. These services may or may not be the same as those provided to public school students, teachers, and other educational personnel.

Expenditures for educational services and other benefits for private school students, teachers, and other educational personnel serving those students shall be equal on a per-pupil basis, taking into account the number and educational

needs of the students to be served, to the expenditures for participating public school students, teachers, and other educational personnel.

**H3. *Who may provide the services?***

Services shall be provided:

- By employees of the LEA or another public agency
- Through a contract by the public agency with an individual, association, agency, organization, or other entity

In the provision of those services, the employee, person, association, agency, organization, or other entity shall be independent of the private school and of any religious organization, and the employment or contract shall be under the control and supervision of the LEA, consortium, or entity.

**H4. *Who has control of the funds?***

The LEA, consortium, or entity maintains control of funds used to provide services under Title IV, Part A. The LEA, consortium, or entity may provide a budget for the year to each private school in order to assist in the planning process. It also maintains title to materials, equipment, and property purchased with those funds.

**Segment I**

**Title IV, Part B–21st Century Community Learning Centers: Overview**

The 21st Century Community Learning Centers (21st CCLC) Program provides before- and after-school (including summer) services to students and their families that include academic enrichment activities, particularly for students who attend low-performing schools, to help them meet state and local student performance standards in core academic subjects. Activities may include remedial education, academic enrichment, art, music, tutoring, mentoring, recreation, technology, drug and violence prevention, counseling, character education, and family literacy.

The Uniform Provisions apply to the 21st CCLC Program and require the equitable participation of private school students and education personnel who are part of the target population.

**I1. *Are religious organizations, including entities such as religious private schools, eligible to receive 21st CCLC grants from the CDE?***

Yes. Faith-based organizations (FBOs) are eligible to apply for 21st CCLC Program grants provided they meet all statutory and regulatory requirements of this program. A local grantee, including an FBO may not discriminate against beneficiaries on the basis of religion. In matters of program eligibility, the Department may not discriminate against grant applicants with regard to religion.

However, NCLB Section 4204 requires that states give priority to applications submitted jointly by an LEA, consortium, or entity receiving Title I funds and a community-based organization or other agency proposing to serve students in schools in need of improvement under NCLB Section 1116.

Funds are to be used solely for the purposes set forth in this grant program. NCLB Section 9505 states that no funds may be expended to support religious practices, such as religious instruction, worship, or prayer. FBOs may offer such practices, but not as part of the program receiving assistance, and FBOs should comply with generally applicable cost accounting requirements to ensure that funds are not used to support these activities. For example, FBOs may wish to keep grant funds in a separate account or accounts to ensure that they are not used inappropriately. Office of Management and Budget (OMB) Circulars A-21 (for educational institutions) and A-122 (for non-profit organizations) provide further guidance regarding these accounting requirements.

**12. *Are private school students, teachers, and other educational personnel eligible to participate in 21st CCLC activities carried out by public schools?***

Yes. Students, teachers, and other educational personnel are eligible to participate in 21st CCLC programs on an equitable basis. A public school or other public or private organization that is awarded a grant must provide equitable services to private school students, their families, and their educators, if those students are part of the population identified for assistance.

<p style="text-align: center;"><b>Segment J</b> <b>Title V, Part A–Innovative Programs: Overview</b></p>
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Innovative Programs, as mandated by NCLB sections 5101 to 5146, support education reform and innovative school improvement programs to improve school, student, and teacher performance. Private school students, teachers, and other educational personnel may receive professional development, library materials, and educational equipment. Other activities may include:

- Community service programs
- Consumer education
- Purchase of computer hardware and software
- Programs to hire and support school nurses
- School-based mental health services
- Programs for cardiopulmonary resuscitation training in schools
- Parent and community involvement

**J1. *How may private school students and educators receive services under Title V, Part A?***

An LEA, consortium, or entity must provide Title V, Part A, services to private school students and educators if, after consultation with private school officials, the officials of the private school indicate that they wish their students and/or educational personnel to participate under Uniform Provisions. The LEA, consortium, or entity must contact the private schools within the LEA, consortium, or entity annually to determine which schools wish to participate. The LEA, consortium, or entity must consult with the officials of interested private schools in a timely and meaningful manner to determine the needs of the students, the types of Title V, Part A, services that will be provided, and how those services will be provided. The LEA, consortium, or entity provides those services on an equitable basis whether or not the services are the same Title V, Part A, services the LEA, consortium, or entity provides to the public school students and educators.

The expenditures for such services, however, shall be equal on a per-pupil basis (consistent with the number of students enrolled) to Title V, Part A, services provided to the public school students and educators.

When calculating the per-pupil allocation for Title V, Part A, the per-pupil allocation is based on the number of students *“enrolled in private elementary and secondary schools in areas served”* by the school district. Residence is not a factor.

NCLB Section 5142 specifies that LEAs, consortia, or entities pay the cost of administering Title V, Part A, services for public and private school students “off the top” of their allocations, before calculating how much of the Title V, Part A, funds are to be made available for services for public and private school students, teachers, and other educational personnel.

**J2. *What administrative requirements apply regarding the provision of services to private school students and educators?***

The services, materials, and equipment that an LEA, consortium, or entity provides for the benefit of participating private school students and educators must be secular, neutral, and nonideological. The control of Title V, Part A, funds and the title to any equipment and materials purchased with those funds must remain in the LEA, consortium, or entity. No Title V, Part A, funds may be paid to any private school, and the title to equipment and materials may not be transferred to any private school.

Title V, Part A, services must be provided by a public agency either directly or through a contractor. Any contractor must be a person or an association, agency, or corporation who or that, in the provision of the Title V, Part A, services, is

independent of the private school and any religious organization. A public agency must supervise and have ultimate control over any contractor hired to provide Title V, Part A, services.

Title V, Part A, services for private school students must supplement, and in no case supplant, the level of services that would be available to participating students, teachers, and other educational personnel in the private schools in the absence of the Title V, Part A, funds.

**J3. *How may an LEA, consortium, or entity ensure that Title V, Part A, resources are provided in a proper manner for the benefit of private school students, teachers, and other educational personnel?***

LEAs, consortia, or entities should implement safeguards and procedures to ensure that Title V, Part A, funds are used properly for private school students and educators.

First, private school officials should be fully informed of and agree to the limitations on the use of any equipment and materials located in the private school. LEAs, consortia, or entities should obtain from the appropriate private school official a written assurance that any equipment and materials placed in the private school will be used only for secular, neutral, and nonideological purposes; that private school personnel will be informed as to these limitations; and that the equipment and materials will supplement, and in no case supplant, the equipment and materials that, in the absence of the Title V, Part A, program, would have been made available for the participating students.

Second, the LEA, consortium, or entity is responsible for ensuring that any equipment and materials placed in the private school are used only for proper purposes. The LEA, consortium, or entity should determine that any Title V, Part A, materials, such as library books and computer software, are secular, neutral, and nonideological. A good benchmark for this review is that the equipment and materials would be appropriate for use in public schools.

The LEA, consortium, or entity should mark all equipment and materials purchased with Title V, Part A, funds so that they are clearly identifiable as Title V, Part A, property of the LEA, consortium, or entity. The LEA, consortium, or entity should maintain an up-to-date inventory of all Title V, Part A, equipment and materials provided for the benefit of private school students. It is also a helpful practice for private schools to maintain logs to document the use of Title V, Part A, equipment and materials located in their schools. The LEA, consortium, or entity should perform periodic on-site monitoring of the use of the equipment and materials. The monitoring could include on-the-spot checks of the use of the equipment and materials, discussions with private school officials, and a review of any logs maintained.

Third, the LEA, consortium, or entity should designate someone to oversee Title V, Part A, services for private school students and ensure that services, materials, and equipment provided for these students are secular, neutral, and nonideological. The designated person should also be responsible for receiving and handling any complaints or allegations that Title V, Part A funds are being used for improper activities for private school students and educators.

LEAs, consortia, or entities need to ensure that if any violations occur, they are corrected at once. An LEA, consortium, or entity must remove materials and equipment from a private school immediately if removal is needed to avoid an unauthorized use.

**J4. *May private school students, teachers, and other educational personnel receive services under any Title V, Part A, innovative program area?***

If Title V, Part A, funds are used to provide services for private school students and educators, these services must primarily benefit the students and educators, not the private schools. This means that the funds must be used to meet specific needs of students enrolled in the private schools, rather than the needs of the private schools themselves or the general needs of the students enrolled in the private schools (See Section 76.658 of the Education Department General Administrative Regulations [EDGAR]).

NCLB Section 5131 specifies that when working with private schools to decide what Title V, Part A, programs and activities will be carried out for students, teachers, and other educational personnel in those schools, LEAs, consortia, or entities must ensure that the programs and activities are supplemental in nature and will meet the specific needs of the students enrolled in the schools. For example, LEAs, consortia, or entities may not use funds for class-size reduction purposes in a private school. This use of funds, which would involve hiring teachers for private school classrooms, would meet the needs of the private schools themselves, as well as the general needs of the students enrolled in the schools, rather than the specific needs of those students. However, LEAs, consortia, or entities may use funds to provide professional development activities for educators in private schools.

There are several innovative assistance programs that cannot be carried out in a private school. These include:

- (1) The planning, design, and initial implementation of charter schools
- (2) Activities to promote, implement, or expand public school choice
- (3) Programs to implement the unsafe school choice policy in NCLB Section 9532

For all other innovative assistance programs, particularly those involving education reform or school improvement activities, LEAs, consortia, or entities

must evaluate closely whether the activities proposed to be carried out in a private school will primarily benefit the students enrolled in the school or the school itself. If the latter, then the LEA, consortium, or entity may not permit that activity or program to be implemented in the private school. In some instances, a program or activity that primarily benefits the private school's students (because it addresses specific, rather than general, needs of the students) will also incidentally benefit the school. The LEA, consortium, or entity may permit a program or activity of this type to be carried out in the private school. However, LEAs, consortia, or entities must be careful in this determination and may not authorize any services whose purpose is to benefit the general needs of the private school or its students.

**J5. *What are the obligations of LEAs, consortia, or entities to private schools that did not participate in Title V, Part A, programs in the preceding year?***

The LEA has the obligation to contact, on an annual basis, appropriate officials from private schools within the LEA, consortium, or entity to determine whether such schools desire that their students and/or educational personnel participate in Title V, Part A, programs. This must be done for all schools whether or not they participated in the program during the previous year. Once a private school agrees on behalf of its students and educators to participate, the enrollment of those students is considered in calculating the allocation for the LEA, consortium, or entity for the following year. The method for calculating funds does not diminish the responsibilities of the LEA, consortium, or entity under NCLB Section 5142.

**J6. *What happens if an LEA, consortium, or entity chooses not to participate in the Title V, Part A, program?***

If no program is carried out in the LEA, consortium, or entity, the CDE shall make arrangements to provide students and educators in private schools in the LEA, consortium, or entity services and materials to the same extent as would have occurred if the LEA, consortium, or entity had received funds. These arrangements may be set up through contracts with nonprofit agencies or organizations.

<p style="text-align: center;"><b>Segment K</b> <b>Title V, Part D, Subpart 6 – Gifted and Talented Students</b></p>
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NCLB Section 5466 mandates that provision is made for the equitable participation of students and teachers in private nonprofit elementary schools and secondary schools, including the participation of teachers and other personnel in professional development programs serving gifted and talented students.



<p style="text-align: center;"><b>Segment L</b> <b>Transferring NCLB Funds: Private School Involvement: Overview</b></p>
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In general, an LEA, consortium, or entity may transfer up to 50 percent of each fiscal year's funds that it receives *by formula* under the following provisions:

- Title II, Part A - Improving Educator Quality Grants
- Title II, Part D - Enhancing Education Through Technology Grants
- Title IV, Part A - Safe and Drug-Free Schools and Communities Grants
- Title V, Part A - Innovative Programs

An LEA, consortium, or entity that has been identified for program improvement under NCLB Section 1116 may transfer up to 30 percent of each fiscal year's funds that it receives *by formula* under each of the programs listed above. All of the transferred funds must be used for LEA, consortium, or entity program improvement activities consistent with the statute. An LEA, consortium, or entity that has been identified for corrective action may not transfer funds from one program to another during the period that it is in corrective action status.

The questions and answers below focus on private school involvement in the transferring of funds. For complete guidance on this topic, go to <http://www.ed.gov/programs/transferability/finalsummary04.doc>.

**L1. Does the LEA, consortium, or entity need approval from the CDE or from the USDE to transfer NCLB funds among eligible programs?**

The law authorizes an eligible LEA, consortium, or entity to transfer funds without seeking approval from either the CDE or the USDE. Thus, an LEA, consortium, or entity does not have to apply for transferability authority – it already has that authority. However, the LEA, consortium, or entity must notify the CDE of its intent to transfer funds at least 30 days before each transfer occurs.

**L2. What steps must an LEA, consortium, or entity take before transferring funds?**

Before transferring funds, an LEA, consortium, or entity must:

- (a) Conduct consultations in accordance with Uniform Provisions in order to provide for the equitable participation of private school students and staff
- (b) Determine what funds are to be transferred (subject to the applicable percentage limitation) and the programs to which the funds will be transferred on the basis of the LEA's, consortium's, or entity's priorities and after engaging in the consultation process
- (c) Modify each affected LEA, consortium, or entity plan or application to account for the transfer
- (d) Establish an effective date for the transfer

- (e) Notify the CDE of the transfer at least 30 days *before* the effective date of the transfer (If a transfer results in a significant change in the administration or operation of a local plan or application, the LEA, consortium, or entity must also submit to the CDE, within 30 days after the transfer, a copy of its revised local plan or application)

**L3. *How do requirements relating to the equitable participation of private school students and staff apply to funds that an LEA, consortium, or entity is considering for transfer?***

Under Uniform Provisions, each of the programs covered by the LEA's, consortium's, or entity's authority to transfer funds is subject to the equitable participation requirements of each title. Thus, before an LEA, consortium, or entity may transfer any funds, it must engage in timely and meaningful consultation with private school officials. With respect to the transferred funds, private school students and teachers are entitled to receive equitable services from the LEA, consortium, or entity under the programs to which the funds are transferred.

An LEA, consortium, or entity may not transfer funds to a particular program solely to provide services for private school students and/or educators. Rather, the LEA, consortium, or entity provides equitable services to private school students and educators from the overall funds of a program, including the transferred funds.

**L4. *May an LEA, consortium, or entity transfer funds more than one time during a year?***

Yes. The law does not limit the number of times an LEA, consortium, or entity may transfer funds during a year.